



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2015-0565; FRL-9932-84-Region 7]

**Approval and Promulgation of Air Quality Implementation Plans;
State of Nebraska; Cross-State Air Pollution Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska in a letter dated March 30, 2015. This SIP revision provides Nebraska's state-determined allowance allocations for existing electric generating units (EGUs) in the State for the 2016 control periods and replaces the allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the "good neighbor" provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind air quality. In this final action EPA is approving Nebraska's SIP revision, incorporating the state-determined allocations for the 2016 control periods into

the SIP, and amending the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect this approval and inclusion of the state-determined allocations. EPA is taking direct final action to approve Nebraska's SIP revision because it meets the requirements of the CAA and the CSAPR requirements to replace EPA's allowance allocations for the 2016 control periods. This action is being taken pursuant to the CAA and its implementing regulations. EPA's allocations of CSAPR trading program allowances for Nebraska for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP. The CSAPR FIPs for Nebraska remain in place until such time as the State decides to replace the FIPs with a SIP revision.

DATES: This direct final rule will be effective [INSERT DATE 40 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0565, by one of the following methods:

1. www.regulations.gov. Follow the on-line instructions for submitting comments.
2. Email: Kemp.lachala@epa.gov
3. Mail or Hand Delivery: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2015-0565. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact

information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of

business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7214 or by email at Kemp.lachalasa@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. 2016 CSAPR SIPs
- III. What is EPA’s Analysis of Nebraska’s Submission?
- IV. Final Action

I. What is Being Addressed in this Document

EPA is taking direct final action to approve revisions to the SIP submitted by the State of Nebraska in a letter dated March 30, 2015, that modifies the allocations of allowances established by EPA under the CSAPR FIPs for existing EGUs for the 2016 control periods.¹ The CSAPR allows a subject state, instead of EPA, to allocate allowances under the SO₂ annual, NO_x

¹ Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; August 8, 2011 (76 FR 48208).

annual, and NO_x ozone season trading programs to existing EGUs in the State for the 2016 control periods provided that the state meets certain regulatory requirements.² EPA issued the CSAPR on August 8, 2011, to address CAA section 110(a)(2)(D)(i)(I) requirements concerning the interstate transport of air pollution and to replace the Clean Air Interstate Rule³ (CAIR), which the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded to EPA for replacement.⁴ EPA found that emissions of SO₂ and NO_x in 28 eastern, midwestern, and southern states⁵ contribute significantly to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of three air quality standards—the annual PM_{2.5} NAAQS promulgated in 1997⁶ (15 micrograms per cubic meter (µg/m³)), the 24-hour PM_{2.5} NAAQS promulgated in 2006⁷ (35 µg/m³), and the 8-hour ozone NAAQS

² The CSAPR is implemented in two Phases (I and II) with Phase I referring to 2015 and 2016 control periods, and Phase II consisting of 2017 and beyond control periods.

³ Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; May 12, 2005 (70 FR 25162).

⁴ *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g*, 550 F.3d 1176 (D.C. Cir. 2008).

⁵ The CSAPR obligations related to ozone-season NO_x emissions for five states were established in a separate rule referred to here as the Supplemental Rule. Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone; December 27, 2011 (76 FR 80760).

⁶ National Ambient Air Quality Standards for Particulate Matter; July 18, 1997 (62 FR 36852).

⁷ National Ambient Air Quality Standards for Particulate Matter; October 17, 2006 (71 FR 61144).

promulgated in 1997⁸ (0.08 parts per million). The CSAPR identified emission reduction responsibilities of upwind states, and also promulgated enforceable FIPs to achieve the required emission reductions in each of these states through cost effective and flexible requirements for power plants.

Nebraska is subject to the FIPs that implement the CSAPR and require certain EGUs to participate in the EPA-administered federal SO₂ annual and NO_x annual cap-and trade programs.⁹ Nebraska's March 30, 2015, SIP revision allocates allowances under the CSAPR to existing EGUs in the State for the 2016 control periods only. Nebraska's SIP revision includes state-determined allocations for the CSAPR NO_x annual and SO₂ Group 2 annual trading programs, and complies with the 2016 NO_x allocation and SO₂ allocation SIP requirements set forth at 40 CFR 52.38 and 52.39, respectively. Pursuant to these regulations, a state may replace EPA's CSAPR allowance allocations for existing EGUs for the 2016 control periods

⁸ National Ambient Air Quality Standards for Ozone; July 18, 1997 (62 FR 38856).

⁹ On July 28, 2015, the D.C. Circuit, issued an opinion upholding CSAPR, but remanding without vacatur certain state emissions budgets to EPA for reconsideration. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302, slip op. CSAPR implementation at this time remains unaffected by the court decision, and EPA will address the remanded emissions budgets in a separate rulemaking. Moreover, Nebraska's emissions budgets were not among those remanded to EPA for reconsideration.

provided that the state submits a timely SIP revision containing those allocations to EPA that meets the requirements in 40 CFR 52.38 and 52.39.

Through this action, EPA is approving Nebraska's March 30, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIP's regulatory text for Nebraska at 40 CFR 52.1428 and 52.1429 to reflect this approval and inclusion of the state-determined allowance allocations for the 2016 control periods. EPA's allocations of CSAPR trading program allowances for Nebraska for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. EPA is not making any other changes to the CSAPR FIPs for Nebraska in this action. The CSAPR FIPs for Nebraska remain in place until such time the State decides to replace the FIPs with a SIP revision. EPA is taking direct final action to approve Nebraska's March 30, 2015, SIP submission because it complies with the CAA and the CSAPR regulations. Below is a summary of the provisions allowing a state to submit SIP revisions to EPA to modify the 2016 allowance allocations. For more detailed information on the CSAPR, refer to the August 8, 2011, preamble and other subsequent related rulemakings referenced throughout this rulemaking.

II. 2016 CSAPR SIPs

The CSAPR allows states to determine allowance allocations for the 2016 control periods through submittal of a complete SIP revision that is narrower in scope than an abbreviated or full SIP submission that states may use to replace the FIPs and/or to determine allocations for control periods in 2017 and beyond. Pursuant to the CSAPR, a state may adopt and include in a SIP revision for the 2016 control period a list of units and the amount of allowances allocated to each unit on the list, provided the list of units and the allocations meet specific requirements set forth in 40 CFR 52.38(a)(3) and (b)(3) for NO_x and 52.39(d) and (g) for SO₂. If these requirements are met, the Administrator will approve the allowance allocation provisions as replacing the comparable provisions in 40 CFR part 97 for the State. SIP revisions under this expedited process may only allocate the amount of each state budget minus the new unit set-aside and the Indian country new unit set-aside. For states subject to multiple trading programs, options are available to submit 2016 state-determined allocations for one or more of the applicable trading programs while leaving unchanged the EPA-

determined allocations for 2016 in the remaining applicable trading programs.¹⁰

In developing this procedure, EPA set deadlines for submitting the SIP revisions for 2016 allocations and for recordation of the allocations that balanced the need to record allowances sufficiently ahead of the control periods with the desire to allow state flexibility for 2016 control periods. These deadlines allow sufficient time for EPA to review and approve these SIP revisions, taking into account that EPA approval must be final and effective before the 2016 allocations can be recorded and the allowances are available for trading. The CSAPR, as revised, set a deadline of October 17, 2011 or March 6, 2015 (in the case of allocations of ozone season NO_x allowances for states covered by the Supplemental Rule) for states to notify EPA of their intent to submit these SIP revisions.¹¹ See 40 CFR 52.38 and 52.39.

¹⁰ States can also submit SIP revisions to replace EPA-determined, existing-unit allocations with state-determined allocations for control periods after 2016 via a separate process described at 40 CFR 52.38(a)(4), (a)(5), (b)(4), and (b)(5) and 52.39(e), (f), (h), and (i).

¹¹ For the five states (Iowa, Michigan, Missouri, Oklahoma, and Wisconsin) covered in the Supplemental Rule in the case of ozone season NO_x, March 6, 2012, was originally the date by which notifications of intentions to submit state allocations were due to the Administrator, but that date was later delayed to March 6, 2015. See 76 FR 80760 and 79 FR 71671.

Twelve states, including Nebraska, notified EPA by the applicable deadlines of their intentions to submit SIP revisions affecting 2016 allocations.¹² Pursuant to EPA's December 3, 2014, Interim Final Rule,¹³ the deadlines to submit these SIPs were delayed by three years, making the deadline for these twelve states to submit a 2016 allocation SIP revision April 1, 2015, or October 1, 2015, (in the case of allocations of ozone season NO_x allowances for states covered by the Supplemental Rule). Each state may submit a SIP to allocate allowances for the 2016 control periods provided it meets the following requirements pursuant to 40 CFR 52.38 and 52.39:

- Notify the EPA Administrator by October 17, 2011 or March 6, 2015 (in the case of allocations of ozone season NO_x allowances for states covered by the Supplemental Rule) of intent to submit state allocations for the 2016 control periods in a format specified by the Administrator. See 40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i).

¹² The docket for today's action contains Nebraska's October 17, 2011, letter notifying EPA of its intention to submit a SIP revision with respect to allocations of both annual NO_x allowances and annual SO₂ allowances.

¹³ Rulemaking to Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter; December 3, 2014 (79 FR 71663).

- Submit to EPA the SIP revision modifying allowance allocations for the 2016 control periods no later than April 1, 2015, or October 1, 2015 (in the case of allocations of ozone season NO_x allowances for states covered by the Supplemental Rule). See 40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii).
- Provide 2016 state-determined allocations only for units within the State that commenced commercial operation before January 1, 2010. See 40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1).
- Ensure that the sum of the state-determined allocations is equal to or less than the amount of the total state budget for 2016 minus the sum of the new unit set-aside and the Indian country new unit set-aside. See 40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2).
- Submit the list of units and the 2016 state-determined allowance allocations as a SIP revision electronically to EPA in the format specified by the Administrator. See 40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3).

- Confirm that the SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision by EPA and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97. See 40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4).

Additionally, these limited SIP revisions for the 2016 state-determined allocations are required to comply with SIP completeness elements set forth in 40 CFR part 51, appendix V (i.e., conduct adequate public notice of the submission, provide evidence of legal authority to adopt SIP revisions, and ensure that the SIP is submitted to EPA by the State's Governor or his/her designee). If a state submits to EPA a 2016 CSAPR SIP revision meeting all the above-described requirements, including compliance with the applicable notification and submission deadlines, and EPA approves the SIP submission by October 1, 2015 (or April 1, 2016, in the case of allocations of ozone season NO_x allowances for states covered by the Supplemental Rule), EPA will record state-determined allocations for 2016 by October 1, 2015 (or April 1, 2016) into the Allowance Management System (AMS). Nebraska's March 30, 2015 SIP submission addresses

the aforementioned requirements allowing a state to allocate 2016 CSAPR allowances for the annual NO_x and Group 2 SO₂ trading programs. EPA's analysis of Nebraska's SIP submission is explained below in section III.

III. What is EPA's Analysis of Nebraska's SIP Submission?

On March 30, 2015, Nebraska submitted a SIP revision intended to replace the CSAPR FIP allocations of the CSAPR NO_x annual and SO₂ Group 2 allowances for the 2016 control periods. For approval, this SIP revision must meet the specific requirements found in 40 CFR 52.38(a)(3) and 52.39(g) described above. The following is a list of criteria under 40 CFR 52.38(a)(3) and (b)(3) and 52.39(d) and (g), described in section II in this document, and the results of EPA's analysis of Nebraska's SIP revision:

- A. Notification from a State to EPA must be received by October 17, 2011, or March 6, 2015, in the case of ozone season NO_x SIP revisions for states covered by the December 27, 2011 Supplemental Rule (76 FR 80760), of its intent to submit a complete SIP revision for 2016 existing unit allocations (40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i)).

On October 17, 2011, Nebraska notified EPA via a letter of the State's intent to submit complete SIP revisions for allocating TR NO_x Annual and TR SO₂ Group 2 allowances¹⁴ to existing units (i.e., units that commenced commercial operation before January 1, 2010) for the second implementation year of the CSAPR trading programs.

B. A complete SIP revision must be submitted to EPA no later than April 1, 2015, or October 1, 2015, in the case of ozone season NO_x SIP revisions for states covered by the December 27, 2011 Supplemental Rule (76 FR 80760) (40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii)).

EPA has reviewed the March 30, 2015 submittal from Nebraska and found it to be complete. This submittal satisfies the applicable elements of SIP completeness set forth in appendix V to 40 CFR part 51.

¹⁴ The abbreviation "TR" in certain legal terms used in the CSAPR trading programs, including the legal terms for the trading program allowances, stands for "Transport Rule," an earlier name for the CSAPR.

C. The SIP revision should include a list of TR NO_x Annual, TR NO_x Ozone Season, TR SO₂ Group 1 or Group 2 units, whichever is applicable, that are in the State and commenced commercial operation before January 1, 2010 (40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1)).

As part of Nebraska's SIP revision, the State submitted a list of units to be allocated TR NO_x Annual and TR SO₂ Group allowances for the 2016 control periods. The list identifies the same units as were identified in the notice of data availability (NODA) published by EPA on December 3, 2014 (79 FR 71674). Hence, EPA has determined that each unit on the list submitted by Nebraska as part of the SIP revision is located in the State of Nebraska and had commenced commercial operation before January 1, 2010.

D. The total amount of TR NO_x Annual, TR NO_x Ozone Season, or TR SO₂ Group 1 or Group 2 allowance allocations, whichever is applicable, must not exceed the amount, under 40 CFR 97.410(a), 97.510(a), 97.610(a), or 97.710(a), whichever is applicable, for the State and the control periods in 2016, of the TR NO_x Annual, TR NO_x Ozone Season, TR SO₂ Group 1 or Group 2 trading budget minus the sum of the new unit set-aside and Indian

country new unit set-aside (40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2)).

As amended, the CSAPR established the NO_x annual budget, new unit set-aside, and Indian country new unit set-aside for Nebraska for the 2016 control periods as 30,039 tons, 1,772 tons, and 30 tons, respectively, and established the SO₂ Group 2 budget, new unit set-aside, and Indian country new unit set-aside as 68,162 tons, 2,658 tons, and 68 tons, respectively. Nebraska's SIP revision, for approval in this action, does not affect these budgets, which are total amounts of allowances available for allocation for the 2016 control periods under the EPA-administered cap-and-trade programs under the CSAPR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established state budgets.

The Nebraska SIP revision allocating TR NO_x Annual allowances for the 2016 control period establishes allocations exceeding, by one (1) allowance due to rounding,¹⁵ the amount of

¹⁵ The total of the state-determined TR NO_x Annual allowance allocations to existing units for 2016 under Nebraska's SIP revision (28,238 allowances) equals the total of the EPA-determined TR NO_x Annual allowance allocations to existing units for 2016 under the CSAPR as amended. This total differs by one allowance from the amount of the state's 2016 NO_x annual budget minus the sum of the new unit set-aside and the Indian country new unit set-aside due to rounding, as noted in the December 3, 2014, Notice of Data Availability regarding the EPA-determined allocations. *See* 79 FR 71674.

the budget under §97.410(a) minus the sum of the new unit set-aside and the Indian county new unit set aside (30,039 tons - (1,772 tons + 30 tons)) = 28,237 tons). The Nebraska SIP revision allocates 28,238 TR NO_x annual allowances to existing units in the State. However, EPA notes that proportionately, one allowance is a tiny fraction of the overall new unit set-aside budget for new TR NO_x annual units in Nebraska (approximately 0.06%). In addition, for 2015, the number of TR NO_x annual allowances allocated from Nebraska's 2015 new unit set-aside to new units is well below the total number of allowances available in that set-aside,¹⁶ and it appears highly likely this will be the case again in 2016. EPA therefore does not believe the extra allowance allocated to Nebraska's existing CSAPR units in 2016 should weigh negatively in EPA's evaluation of the State's 2016 CSAPR SIP submittal, and will enter 1,771 allowances from the Nebraska CSAPR 2016 budget (instead of 1,772 allowances) into the TR NO_x annual new unit set-aside for the 2016 control period.¹⁷

¹⁶ See Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2015 Compliance Year; July 28, 2015 (80 FR 44882).

¹⁷ The quantities of allowances to be allocated through the new unit set-aside (NUSA) process may differ slightly from the NUSA amounts set forth in 40 CFR 97.410(a), 97.510(a), 97.610(a), and 97.710(a) because of rounding in the spreadsheet of CSAPR FIP allowance allocations to existing units.

The Nebraska SIP revision allocating TR SO₂ Group 2 allowances for the 2016 control period does not establish allocations exceeding the amount of the budget under §97.710(a) minus the sum of the new unit set-aside and Indian County new unit set-aside (68,162 tons - (2,658 tons + 68 tons)) = 65,436 tons). The Nebraska SIP revision allocates 65,432 TR SO₂ Group 2 allowances to existing units in the State. EPA will place the four unallocated allowances from the Nebraska CSAPR 2016 budget into the TR SO₂ Group 2 new unit set-aside for the 2016 control period.

E. The list should be submitted electronically in the format specified by the EPA (40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3)).

On March 30, 2015, EPA received an e-mail submittal from Nebraska in the EPA-approved format.

F. The SIP revision should not provide for any changes to the listed units or allocations after approval of the SIP revision and should not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA,BBBBB, CCCCC, or DDDDD of 40 CFR part 97 (40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4)).

The Nebraska SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBB, CCCCC, or DDDDD of 40 CFR part 97.

For the reasons discussed above, Nebraska's SIP revision complies with the 2016 allowance allocation SIP requirements established in the CSAPR FIPs as codified at 40 CFR 52.38 and 52.39. Through this action, EPA is approving Nebraska's March 30, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIPs' regulatory text for Nebraska at 40 CFR 52.1428 and 52.1429 to reflect this approval and inclusion of the state-determined allowance allocations for the 2016 control periods. EPA is not making any other changes to the CSAPR FIPs for Nebraska in this action. EPA is taking final action to approve Nebraska's March 30, 2015, SIP revision because it is in accordance with the CAA and its implementing regulations.

IV. Final Action

EPA is taking final action to approve Nebraska's March 30, 2015, CSAPR SIP revisions that provide Nebraska's state-determined allowance allocations for existing EGUs in the State for the 2016 control periods to replace the allowance

allocations for the 2016 control periods established by EPA under the CSAPR. Consistent with the flexibility given to states in the CSAPR FIPs at 40 CFR 52.38 and 52.39, Nebraska's SIP revision allocates allowances to existing EGUs in the State under the CSAPR's NO_x annual and SO₂ Group 2 trading programs. Nebraska's SIP revision meets the applicable requirements in 40 CFR 52.38 and 52.39 for allocations for the 2016 control periods of NO_x annual allowances and SO₂ Group 2 allowances, respectively. EPA is approving Nebraska's SIP revision because it is in accordance with the CAA and its implementing regulations.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [INSERT DATE 40 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] without further notice unless the Agency receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the

rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [INSERT DATE 40 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to

address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major

rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides.

Dated: August 12, 2015.

Mark Hague,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

Part 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC - Nebraska

2. In §52.1420(e) the table is amended by adding a new entry (28) at the end of the table to read as follows:

§52.1420 Identification of Plan.

* * * * *

(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or Nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(28) Cross State Air Pollution Rule - State-Determined Allowance Allocations for the 2016 control periods	Statewide	3/30/15	[Insert Federal Register date of publication date] and [Insert Federal Register citation]	

3. Section 52.1428 is amended by adding paragraph (c) to read as follows:

§ 52.1428 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) Pursuant to § 52.38(a)(3), Nebraska's state-determined TR NO_x Annual allowance allocations established in the March 30, 2015, SIP revision replace the unit-level TR NO_x Annual allowance allocation provisions of the TR NO_x Annual Trading Program at 40 CFR 97.411(a) for the State for the 2016 control period with a list of TR NO_x Annual units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR NO_x Annual allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on [Insert date of publication in **Federal Register**].

4. Section 52.1429 is amended by adding paragraph (c) to read as follows:

§ 52.1429 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

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(c) Pursuant to § 52.39(g), Nebraska's state-determined TR SO₂ Group 2 allowance allocations established in the March 30, 2015, SIP revision replace the unit-level TR SO₂ Group 2 allowance allocation provisions of the TR SO₂ Group 2 Trading Program at 40 CFR 97.711(a) for the State for the 2016 control period with a list of TR SO₂ Group 2 units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR SO₂ Group 2 allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on [Insert date of publication in **Federal Register**].

[FR Doc. 2015-20631 Filed: 9/14/2015 08:45 am; Publication Date: 9/15/2015]